

**Summaries of Motions filed in Consolidated Docket
Nos. 2017-207-E, 2017-305-E, and 2017-370-E**

In recognition of the Hearing Officer's request for brevity, the following lists and summarizes some of the arguments made in the principal motions and briefs that SCE&G has submitted to the Commission in the Consolidated Dockets. This list is not comprehensive of either of the motions and briefs, or the arguments presented in them. Nothing herein is intended to waive or limit any argument, position, or assertion made in SCE&G's prior motions, briefs, or arguments before the Commission. Reference should be made to the source documents for a full understanding of their terms and the scope of SCE&G's arguments.

Motions filed in Docket No. 2017-370-E

1. Joint Applicants' Motion for Declaratory Rulings and Motion *in Limine* (Filed 10/22/18)

On October 22, 2018, Joint Applicants filed a Motion for Declaratory Rulings and Motion *in Limine*, seeking a ruling from the Commission:

- (1) Affirming the findings, rulings, and determinations made by the Commission in the 14 prior proceedings concerning the NND Project, including its determination that SCE&G is entitled to recover the costs incurred on the NND Project through June 30, 2016, and barring the introduction of any testimony, evidence, or argument challenging those prior decisions;
- (2) Declaring that the South Carolina Supreme Court's decision in *S. Carolina Energy Users Committee v. S. Carolina Pub. Serv. Comm'n*, 388 S.C. 486, 697 S.E.2d 587 (S.C. 2010), precluded SCE&G from including in its estimate of future construction costs contingency amounts over and above contractually-established or otherwise hard-budgeted, pre-contingency costs and precludes parties to the Consolidated Dockets from introducing testimony, evidence, or argument to the contrary;
- (3) Finding that the South Carolina Supreme Court's decision in *S. Carolina Energy Users Committee v. S. Carolina Elec. & Gas*, 410 S.C. 348, 764 S.E.2d 913 (S.C. 2014), precludes parties to the Consolidated Dockets from introducing testimony, evidence, or argument placing a burden on SCE&G to recertify the prudence of the NND Project after its initial approval; and
- (4) Holding that the prudence standards set forth in Act No. 258 of 2018 ("Act 258") cannot be applied retroactively and barring the introduction of any testimony, evidence, or argument purporting to apply those standards to the NND Project.

That motion also sought to strike all contrary testimony and documents from the record in the Consolidated Dockets.

Motions filed in Docket No. 2017-207-E

1. SCE&G's Motion to Dismiss Complaint/Petition of Friends of the Earth and Sierra Club (Filed 07/19/17)

On July 19, 2017, SCE&G filed a Motion to Dismiss the Complaint/Petition of Friends of the Earth and the Sierra Club (collectively, the "Petitioners"). As of that time, SCE&G had not yet filed for review and approval of proposed adjustments in its construction plans or BLRA approved costs. Thus, Friends of the Earth's and Sierra Club's Petition was premature. Additionally, much of the relief sought was statutorily prohibited. First, Petitioners sought an Order directing the Company to pay "reparations" to its customers. However, the South Carolina Supreme Court – in *S. Carolina Elec. & Gas Co. v. Pub. Serv. Comm'n*, 275 S.C. 487, 490, 272 S.E.2d 793, 795 (S.C. 1980) – held that reparations could only be paid where a utility charged ratepayers amounts in excess of lawfully established rates, which did not happen here. In fact, Petitioners participated in five of the six contested case BLRA proceedings associated with the NND Project, including the proceeding in which the current cost schedules were approved. Retroactively invalidating lawfully approved rates is illegal and not allowed by statute or court precedent. Petitioners also asked the Commission to order SCE&G to "cease and desist" funding of the NND Project without citing any legal authority for such a request. They cited no legal authority for this request because there is none. This request ignored the 2009 Siting Act certificate for the NND Project, as upheld by the South Carolina Supreme Court, and entry of the requested order would impermissibly abrogate that decision. The 2009 Siting Act certificate vested property rights with SCE&G, and SCE&G has the right to rely on that certificate without the possibility of having to relitigate the prudence of the NND Project. Additionally, Complainants sought a premature prudence review, which is prohibited because a petition had not yet been filed pursuant to S.C. Code Ann. § 58-33-270(E). Finally, they asked the Commission to evaluate the available least cost efficiency and renewable energy alternatives. There is not, however, any statutory basis to do so in Docket No. 2017-207-E.

2. SCE&G's Reply to the Response in Opposition to SCE&G's Motion to Dismiss (Filed 07/26/17)

SCE&G's Reply reiterated the arguments previously set forth in its Motion to Dismiss, and also argued that it is improper to permit the duplicative dockets and testimony that has resulted from the concurrent proceedings in Docket Nos. 2017-305-E and 2017-370-E. Petitioners responded to SCE&G's Motion to Dismiss with a futile attempt at justifying their Petition by trying to re-frame it as seeking relief from judgment pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure, and requesting a reprieve from alleged "fraud on the court." Neither of these arguments were raised in the Petition. Regardless, Petitioners failed to plead these allegations of fraud with specificity, as required by Rule 9(b) of the South Carolina Rules of Civil Procedure. Moreover, such a claim of fraud is improper because, even assuming Petitioners' allegations are true – which SCE&G contests – they cannot meet the very high standards for showing "extrinsic fraud," which they must in order to be entitled to the relief they now claim to be seeking. South Carolina law is clear that the withholding of documents or

providing false testimony – to the extent such actions occurred –constitute intrinsic fraud and thus do not satisfy this standard. There is no meritorious reason for the Petition in Docket No. 2017-207-E to not be dismissed.

3. SCE&G’s Motion to Dismiss Complaint/Petition of Friends of the Earth and Sierra Club (Filed 10/08/18)

SCE&G filed an additional Motion to Dismiss on October 8, 2018, showing that Petitioners themselves admitted that they had already been granted the crux of the relief sought in Docket No. 2017-207-E. At the September 4, 2018, hearing on Transcontinental Gas Pipe Line Company’s Petition to Intervene Out of Time, Robert Guild – Petitioners’ attorney –stated that the issues concerning to the need for cancellation and addressing the immediate impact of the cancellation on customers’ rates had been largely resolved by Order No. 2018-459, in which the Commission ordered immediate rate reductions and refunds. Thus, the only pending issue is remaining in Docket No. 2017-207-E is the Petitioners’ request for an evaluation of renewable energy alternatives, which is not properly raised in a docket seeking “reparations” under S.C. Code Ann. § 58-27-960.

4. SCE&G’s Response to the Commission Request in Order No. 2017-637 for Briefing Concerning Coordination of Dockets, (Filed 10/13/17)

On October 13, 2017 – at the Commission’s request – SCE&G filed its brief concerning consolidating Docket Nos. 2017-207-E, 2017-305-E, and 2017-370-E. In that brief, SCE&G explained that Docket No. 2017-207-E was filed under S.C. Code Ann. § 58-27-970, which allows the Commission to grant refunds to customers when utilities have charged rates that have not been authorized by the Commission, but that the rates in question were authorized under the nine Commission orders granting revised rates for the NND Project. Thus, Docket No. 2017-207-E must be dismissed.

Motions Filed in Docket No. 2017-305-E

1. SCE&G’s Motion to Dismiss and Request for Briefing Schedule and Hearing on Motion to Dismiss (Filed 09/28/17)

On September 28, 2017, SCE&G filed a Motion to Dismiss ORS’s Request for Rate Relief in Docket No. 2017-305-E. That request seeks an order from the Commission requiring SCE&G to “immediately suspend revised rates collections from its customers” pursuant to S.C. Code Ann. § 58-27-920. Because ORS initiated Docket No. 2017-305-E pursuant to §58-27-920, it was statutorily required to have conducted a preliminary investigation to determine that the resulting rates would be “fair and reasonable” or “just and reasonable,” as the statutes and the constitution require. ORS, however, had not (and still has not) made any showing that it conducted the requisite investigation. In fact, SCE&G presented evidence to show that the relief requested would, without question, result in rates that were insufficient, unjust, and unreasonable, thus rendering the relief sought by ORS illegal, unconstitutional, and outside the scope of the Commission’s powers.

2. SCE&G's Response in Opposition to and Motion to Strike the South Carolina Office of Regulatory Staff's Motion to Amend Request (Filed 10/27/17)

In response to SCE&G's Motion to Dismiss, ORS moved to amend its Request to ask that the Commission consider the most prudent manner by which SCE&G will enable its customers to realize the value of the monetized Toshiba Corporation guarantee payment. SCE&G has opposed that request because the relief sought by ORS in its Motion to Amend is still not permitted by S.C. Code Ann. § 58-27-920, and thus necessitates dismissal. Again, ORS did not perform any preliminary investigation with respect to the content and structure of the Company's current schedule of rates and charges, and has produced no evidence showing the impact that applying the Toshiba Corporation's payment differently would have on SCE&G's financial integrity. Granting the requested relief would result in an unconstitutional taking of SCE&G's property pursuant to the Fifth Amendment of the United States and South Carolina Constitutions.

3. SCE&G's Brief in Support of its Motion to Dismiss (Filed 10/31/17)

Because ORS failed to conduct the preliminary investigation required by S.C. Code Ann. § 58-27-920 prior to filing its Request, and failed to provide any factual basis for its Request, the Commission cannot possibly find that ORS's requested rate changes satisfy the "fair and reasonable" standard or comply with the Takings Clauses of the United States and South Carolina Constitutions. In fact, the evidence shows that ORS's requested rate changes would jeopardize SCE&G's financial health and long-term viability. ORS's principal justification for its requested rates is the Attorney General's Opinion regarding the constitutionality of the BLRA. But, the BLRA remains the binding law in this State unless and until it is found to be unconstitutional by a court of law, or revoked by the General Assembly. Additionally, SCE&G submitted extensive evidence demonstrating that ORS cannot show that SCE&G withheld material factual information or otherwise acted in a way that would invalidate revised rates orders, even if such invalidation were legally permissible under the principle of collateral estoppel.

4. SCE&G's Reply Brief in Support of its Motion to Dismiss (Filed 12/07/17)

SCE&G emphasizes again that ORS still has not established that its proposed rates are fair and reasonable, as required by law. SCE&G's assertion that the proposed rates would be unfair and unreasonable remained unchallenged.

5. SCE&G's Motion for Summary Judgment and in the Alternative Motion to Strike (Filed 09/19/18)

The direct testimony that ORS submitted in support of its Request in Docket No. 2017-305-E only consisted of testimony from Elizabeth H. Warner and M. Anthony James. Neither of these witnesses sought to show that ORS conducted the required "preliminary investigation," or that its proposed rates are "fair and reasonable" as required by S.C. Code Ann § 58-27-920. Thus, ORS has still failed to provide any evidence to show that it had met its burden of proof under S.C. Code Ann. § 58-27-920, or that the rates it proposes are "fair and reasonable." This failure warrants the entry of summary judgment for SCE&G in Docket No. 2017-305-E, as well as the striking of Ms. Warner's and Mr. James's testimony.